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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2013-0059]

RIN 0579-AD85

Importation of Fresh Unshu Oranges From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of citrus fruit to remove certain restrictions on the importation of Unshu oranges from Japan. Specifically, we are removing requirements for the fruit to be grown in specified canker-free export areas with buffer zones and for joint inspection in the groves and packinghouses by the Government of Japan and the Animal and Plant Health Inspection Service. We are also clarifying that surface sterilization of the fruit must be conducted in accordance with our regulations. Finally, we are requiring that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the required surface sterilization. These changes will make the regulations concerning the importation of Unshu oranges from Japan consistent with our domestic regulations concerning the interstate movement of citrus fruit from areas quarantined because of citrus canker.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2103.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus canker is a plant disease that is caused by a complex of Xanthomonas spp. bacteria and that affects plants and plant parts of citrus and citrus relatives (Family Rutaceae). The regulations in “Subpart-Citrus Fruit” (7 CFR 319.28) prohibit the importation of fruit from areas infected with certain citrus diseases, including citrus canker, unless the fruit is imported under conditions specified in that section.

On April 10, 2014, we published in the Federal Register (79 FR 19840-19844, Docket No. APHIS-2013-0059) a proposed rule<sup>1</sup> to amend the regulations in § 319.28 that govern the importation of Unshu oranges from Japan. Specifically, we proposed to remove requirements for the fruit to be grown in specified canker-free export areas with buffer zones and for joint inspection in the groves and packinghouses by the Government of Japan and the Animal and Plant Health Inspection Service (APHIS). We also proposed to clarify that surface sterilization of the fruit must be conducted in accordance with 7 CFR part 305. Finally, we proposed to require that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the required surface sterilization.

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<sup>1</sup> To view the proposed rule, its supporting documents, or the comments that we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0059>.

We solicited comments concerning the proposed rule for 60 days ending June 9, 2014. We received seven comments by that date, all from private citizens. The comments are discussed below.

#### General Comments On The Proposed Rule

Six commenters, aware of APHIS' previous efforts to eradicate citrus canker in Florida, asked why APHIS would risk introducing citrus canker into Florida through the importation of infected Unshu oranges from Japan when past infestations were so detrimental to Florida's citrus industry.

As we documented in the pest risk assessment (PRA) that accompanied the proposed rule, APHIS has determined that commercially packed and disinfected fresh citrus fruit is not an epidemiologically significant pathway for the introduction and spread of citrus canker. The provisions of the proposed rule, which are consistent with the measures that must be applied to citrus fruit produced in the State of Florida in order for the fruit to be eligible for interstate movement, were based on this determination. We are confident that those provisions will adequately mitigate the risks associated with the importation of Unshu oranges from Japan.

One commenter expressed concern that the PRA considered citrus canker to be a medium risk pest that could follow the pathway on Unshu oranges from Japan.

While it is true that the PRA considered citrus canker to be a medium risk pest, the PRA did not evaluate whether mitigations exist to address this risk. However, this evaluation was contained in the risk management document (RMD) that accompanied the proposed rule, and the provisions of the proposed rule were based on the recommendations of that RMD. Accordingly, we have determined that, after the phytosanitary measures specified in this rule are applied to the oranges, the pest risk will be mitigated.

Two commenters were concerned about the quality of the fruit that would be imported.

APHIS' authority does not pertain to fruit quality, but to preventing the fruit from introducing or disseminating plant pests within the United States. Regulating fruit quality is under the purview of the United States Department of Agriculture's (USDA's) Agricultural Marketing Service.

#### Comments On Efficacy of Treatment

Three commenters were concerned that the method of treating the fruit described in the proposed rule would not kill all citrus canker bacteria on the fruit.

We agree with the commenters; the treatment may not kill all bacteria on infected fruit. However, the treatment will preclude the fruit from serving as a pathway for the spread of citrus canker. This is because packed citrus fruit is not an epidemiologically significant pathway for the spread of citrus canker. Treatment mitigates the risk posed by this pathway.

#### Comments On Removal Of Joint Inspections

Two commenters asked why APHIS proposed to remove joint inspections, since, they said, those ensured that the citrus being imported had been properly inspected by both parties for evidence of citrus canker, and removing joint inspections would be less restrictive.

Our proposed removal of the requirements for Unshu oranges exported to the United States to have been produced in specified canker-free areas and jointly inspected by the national plant protection organization (NPPO) of Japan and APHIS in the groves and packinghouses would parallel the changes we made in 2009 to the domestic citrus canker regulations and thus harmonize these regulations with our domestic regulations. As mentioned in the proposed rule, packinghouses are still required to register with the NPPO of Japan so the citrus can be treated and packed in accordance with specific sanitary measures before being imported.

### Comment On The Removal Of Buffer Zones

One commenter objected to the removal of buffer zones for citrus fruit fly. However, we did not propose to remove these zones. Rather, we proposed the removal of specific distance requirements for the buffer zones from the regulations. We proposed this in order to allow the NPPO of Japan and APHIS to determine buffer zone distances based on local conditions and to adjust them as needed.

### Comment On Foreign Restrictions

Two commenters asked why APHIS was proposing to lessen restrictions for foreign producers to export their goods, while Japan has stringent rules regarding the importation of food from the United States.

The United States and Japan are a part of the World Trade Organization, and we have both signed the Sanitary and Phytosanitary Measures Agreement (SPS Agreement). As signatories of the SPS Agreement, both the United States and Japan have agreed that any restrictions or prohibitions placed on the importation of fruits and vegetables will be based on scientific evidence, and will not be maintained without sufficient scientific evidence. In instances in which the United States believes that scientific evidence exists to suggest that another country reconsider its restrictions or prohibitions on the importation of U.S. agricultural commodities, we advocate for such a reconsideration.

### Comment On The Removal Of Joint Inspection And The Issuance Of A Phytosanitary Certificate

In § 319.28, before this final rule, paragraph (b)(3) had stated that inspection of the Unshu oranges shall be performed jointly by the plant protection officers of Japan and the United States in the groves prior to and during harvest, and in the packinghouses during packing operations. As we mentioned earlier, we proposed to remove this requirement. One commenter

asked how the NPPO could issue a phytosanitary certificate if they were no longer going to inspect the fruit.

In this case, the phytosanitary certificate is being issued by the NPPO based on the treatment that must be applied and therefore the NPPO is attesting that the treatment has occurred.

#### Comment Regarding the Economic Impacts on Small Businesses

Two commenters were concerned that removing restrictions will negatively affect local U.S. businesses and consumers in the long term.

The Japanese Unshu orange share of the U.S. market for mandarin varieties is expected to be negligible; past imports have served a specialty market during a limited time of the year; and they garner a premium price. The 500 metric tons (MT) that Japan expects may be exported to the United States would be equivalent to less than one-tenth of 1 percent of the U.S. supply of mandarin varieties in 2012. Collectively, these expectations lead to the conclusion that any effect of the rule for U.S. producers of other mandarin varieties would be small.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

#### Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER

INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS received a request from the Government of Japan to reassess the requirements for importing Unshu oranges into the continental United States. The rule would harmonize our regulations that allow importation of Unshu oranges from Japan with our recently amended domestic regulations to prevent the spread of citrus canker disease.

Easy-peel, sweet, juicy, seedless mandarin varieties, including Unshu oranges, are gaining popularity in the United States. The United States does not commercially produce Unshu oranges, but does produce various similar mandarin varieties. U.S. production of these mandarin varieties doubled in 6 years, from 250,000 MT in 2007, to almost 500,000 MT in 2012. Production values of mandarin varieties more than doubled, from \$141 million in 2007 to \$336 million in 2012. In general, harvesting and marketing activities are most active between January 1 and March 31 in California and between November 15 and March 15 in Florida. U.S. imports of mandarin varieties averaged about 142,000 MT per year, valued at \$178 million, between 2010 and 2012, with Chile, Spain, Peru, and Morocco the main sources. Net imports (imports minus exports) averaged about 100,000 MT per year.

In 2012, Japan exported 2,400 MT of Unshu oranges valued at \$4.5 million. Canada was the main destination, accounting for 83 percent of Japan's exports (2,000 MT). Unshu oranges have not been imported from Japan by the United States for the last 3 years. Between 1996 and 2009, the United States imported about 200 MT of Unshu oranges from Japan annually, valued at about \$340,000, only during the months of November and December. They were typically sold at a premium in ethnic specialty stores and through small-package direct delivery to customers who celebrated the New Year's holidays.

Reportedly, up to 500 MT of Unshu oranges may be imported from Japan as a result of this rule. Given the much lower volumes and restricted seasonality of past Unshu orange imports from Japan (about 200 MT annually imported, and only during the months of November and December), 500 MT may be an ambitious goal.

Korea is currently the principal source of Unshu orange imports by the United States. Even if imports from Japan were to reach 500 MT, we expect any product displacement that would occur would be largely borne by Korean Unshu orange suppliers. The extent to which U.S. producers of other mandarin varieties may be affected would depend upon the quantity imported, the degree to which consumers may substitute Unshu oranges for the other mandarin varieties, and their price competitiveness.

Under these circumstances, the rule will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This final rule allows Unshu oranges to be imported into the continental United States from Japan. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.



## Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0418, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

## E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

## List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.28 is amended as follows:

- a. In paragraph (b) introductory text, by removing the words “paragraph (b)(7)” and adding the words “paragraph (b)(8)” in their place.
- b. By revising paragraphs (b)(1) through (b)(4).
- c. By redesignating current paragraphs (b)(5), (b)(6), and (b)(7) as paragraphs (b)(6), (b)(7), and (b)(8), respectively.
- d. By adding a new paragraph (b)(5).
- e. By adding an OMB citation at the end of the section.

The additions and revisions read as follows:

§ 319.28 Notice of quarantine.

\* \* \* \* \*

(b) \* \* \*

(1) The Unshu oranges must be imported in commercial consignments that are practically free of leaves, twigs, and other plant parts, except for stems that are less than 1 inch long and attached to the fruit.

(2) In Unshu orange export areas on Kyushu Island, Japan, trapping for the citrus fruit fly (Bactrocera tsuneonis) must be conducted as prescribed by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries and the U.S. Department of Agriculture. If fruit flies are detected, then shipping will be suspended from the export area until negative trapping shows the problem has been resolved.

(3) Before packing, the oranges must be given a surface sterilization in accordance with part 305 of this chapter.

(4) The packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries.

(5) Unshu oranges imported from Japan must be accompanied by a phytosanitary certificate issued by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries with an additional declaration that the Unshu oranges were packed and produced in accordance with 7 CFR 319.28.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 0579-0173, 0579-0314, and 0579-0418)

Done in Washington, DC, this 21<sup>st</sup> day of October 2014.

Kevin Shea,  
Administrator, Animal and Plant Health Inspection Service.

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